



RECEIPT OF FILINGS  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

This paper, when stamped with the date stamp of the U. S. Patent and Trademark Office, acknowledges receipt of the following paper(s) relating to:

In re Patent Application of	) Attorney Docket No.: REITE0004
Joshua REITER	) Confirmation No.: 5969
Serial No.: 09/678,850	)
Filed: October 4, 2000	) Group Art Unit: 3629
For: INTERACTIVE PROCESS FOR	)
APPLYING OR PRINTING	) Examiner: Edward R. COSIMANO
INFORMATION ON LETTERS OR	)
PARCELS	)

Documents submitted December 30, 2003

1. Petition Pursuant to 37 CFR 1.182 or, in the Alternative, Pursuant to 37 CFR 1.183, to Receive a Refund of Fees Paid in Excess of that Required (7 pages)
2. Exhibits A-F (25 pages)

Dkt. # REITE0004 Due: N/A (JUS/cjf)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

*#15 Refund granted Walden 3.29.04*  
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JAN 12 2004

OFFICE OF PETITIONS

In re Application of:

) Atty. Docket: REITE0004

) Confirmation No.: 5969

Joshua REITER

)

)

Serial No. 09/678,850

) Group Art Unit: 3629

)

Filed: October 4, 2000

)

) Examiner: COSIMANO, Edward R.

For: INTERACTIVE PROCESS FOR  
APPLYING OR PRINTING  
INFORMATION ON LETTERS  
OR PARCELS

)

)

) Date: December 30, 2003

)

**PETITION PURSUANT TO 37 C.F.R. § 1.182, OR, IN THE ALTERNATIVE,  
PURSUANT TO 37 C.F.R. § 1.183, TO RECEIVE REFUND OF  
FEES PAID IN EXCESS OF THAT REQUIRED**

**RECEIVED**

JAN 28 2004

**GROUP 3600**

Adjustment d  
11/13/2003 T  
02 FC:2401  
MAIL STOP PETITION  
11/13/2003 T  
02 FC:2401  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with 35 U.S.C. § 42, the Director "may refund...any amount paid in excess of that required." For the following reasons, Applicant respectfully requests a refund of the following fees paid by him that the Applicant believes was paid in excess of that required: (1) \$475.00 for three month extension of time, and (2) \$165.00 for Notice of Appeal. Applicant believes that these fees, totaling \$640.00, were paid in excess of that required as explained below.

**The Factual Situation**

In the above captioned application, Applicant received a non-final Office Action dated December 31, 2002, which rejected claims 1-50 under the judicially created doctrine of obviousness-type double patenting over either (a) claims 1-20 of U.S. Patent 5,819,241, or (b)

claims 1-35 of U.S. Patent 6,178,411. In response to the December 31<sup>st</sup> Office Action, Applicant filed two terminal disclaimers on February 11, 2003 (See Exhibit A, Response (C), two terminal disclaimers and filing receipt). Subsequently, Applicant received a Final Office Action dated May 6, 2003, which rejected claims 1-50 under the judicially created doctrine of obviousness-type double patenting over claims 1-20 of U.S. Patent 5,819,241. In response to the Final Office Action, Applicant re-filed the terminal disclaimer directed to U.S. Patent 5,819,241 along with Response (D) After Final on May 20, 2003 (see Exhibit B, Response (D), one terminal disclaimer and filing receipt). On June 2, 2003, Examiner Cosimano allowed all of the claims as indicated by the Patent Application Information Retrieval System (see Exhibit C). However, the United States Patent and Trademark Office ("USPTO"), however, a Notice of Allowability was never sent. Instead, Applicant's allowed application was sent for a "second pair of eyes" review. The case presently sits awaiting further action. In the meantime, the USPTO has imposed fees against the Applicant while his Application undergoes this "second pair of eyes" review (see Exhibit D).

#### **Improper Finality of the May 6 Office Action**

The finality of the May 6 Office Action is improper and should be withdrawn in accordance with MPEP § 706.07(d). Specifically, Applicant properly responded to the Examiner's December 31 Office Action by filing two terminal disclaimers, including a terminal disclaimer directed to U.S. Patent 5,819,241. Therefore, the present application should have been allowed and sent for a second pair of eyes review while the application was in a non-final status.

However, a clerical error at the USPTO resulted in the separation of the terminal disclaimer filed February 11, 2003, and directed to U.S. Patent 5,819,241 from the rest of the papers filed by the Applicant on that day. Because of this clerical error at the USPTO, both properly filed terminal

disclaimers did not reach the application and the Examiner issued the May 6 Final Office Action. The claims of the present application were subsequently allowed by Examiner Cosimano on June 2, 2003, after Applicant filed Response (D) After Final on May 20, 2003, which included a copy of Applicant's Response (C) and the terminal disclaimer directed to U.S. Patent 5,819,241.

Therefore, the application was in an improper "after final" status when the claims were allowed by Examiner Cosimano on June 2, 2003. Specifically, it was a clerical error on the part of the USPTO that resulted in the separation of one of the two properly filed terminal disclaimers. This clerical error resulted in the finality of the May 6 Office Action. This finality determination is invalid on technical grounds because the Examiner failed to consider a properly filed terminal disclaimer. Thus, the premature finality as a matter of fact and cannot be viewed as a discretionary matter. Subsequently, the USPTO imposed fees for extensions of time against the Applicant. In this case, the fees are in excess of what is required because the Applicant should not have to pay for time when the "after final" status of an application is improper and the application contains only allowed claims.

In Ex parte Grady, 59 USPQ 276 (Comm'r Pat. 1943), the USPTO declined to refund an administrative fee for statutory extensions of time paid by the applicant even though the Examiner subsequently withdrew finality and allowed all of the claims. In that case, the Commissioner decided that "the error committed in rejecting allowable claims...is not the type of neglect" to warrant a refund. However, Grady is distinguishable from the present circumstances for several reasons.

In Grady the Examiner withdrew his final rejection and allowed the claims as a matter of discretion. The Applicant in Grady paid to maintain pendency of the application while the Examiner reconsidered it. In the present case, the “finality” of the rejection was premature and should have been withdrawn for several reasons. First, the “finality” of the May 6 rejection was technically flawed. Had Applicant’s two terminal disclaimers, filed February 11, 2003, been properly matched with the file, the Examiner would have considered both disclaimers and allowed Applicant’s claims rather than issue the May 6 Final Office Action. Second, Applicant’s claims have been allowed pending a “second pair of eyes” review. There is no rational reason why Applicant should have to pay to maintain the pendency of his application once the claims have been allowed. It is Applicant’s understanding that if the allowed claims withstood the “second pair of eyes” review, the USPTO would send Applicant his Notice of Allowability. Yet, even if the allowed claims were subsequently rejected as a result of the “second pair of eyes” review, the finality would be withdrawn, and a new office action issued. Such procedure is common at the USPTO. Commonly, when the Examiner allows the claims, a Notice of Allowability is issued, and, if the Examiner then finds additional prior art that necessitates withdrawing the Notice of Allowability, a non-final Office Action would be issued. In such cases, the USPTO does not impose additional fees on the Applicant to maintain pendency of his application.

Because the present circumstances are analogous to a situation in which the USPTO withdraws allowability of allowed claims than the erroneous rejection of allowable claims in Grady, the USPTO should refund Applicant’s fees paid to maintain pendency of his allowed claims.

**Administrative Alternative: Ex parte Quayle Procedure**

The USPTO should refund the requested fees because there are alternative procedures at the USPTO for handling applications once the claims have been allowed, and these procedures remove the conditions imposed by the obviously improper final rejection in the present case. Specifically, in Ex parte Quayle, 25 USPQ 74 (Comm'r Pat. 1935), the Commissioner held that once the claims are allowed and only formal matters remain, the Examiner may close prosecution of the application. In such cases, the applicant is given an opportunity to make amendments limited to those required to place the application in condition for allowance. In accordance with MPEP § 706.07(f)(N), (see Exhibit E), when an application is after final and an amendment places all of the claims in condition for allowance except for formal matters, the Examiner should issue an Ex parte Quayle action. When this occurs, "[n]o extension fees would be required since the reply puts the application in condition for allowance except for the correction of formal matters—the correction of which had now yet been required by the Examiner." MPEP § 706.07(f)(N). Thus, the allowability of the claims in Ex parte Quayle practice removes the finality of the Final Office Action.

In the present case, by analogy with Ex parte Quayle procedures, when Examiner Cosimano determined the allowability of the claims of the present application, this decision should have triggered the automatic removal of finality. It should make no difference whether the allowed claims await correction of formal matters or further review by the USPTO. Once the claims have been allowed, as under Ex parte Quayle proceedings, finality should be withdrawn. Therefore, the fees paid by the Applicant to maintain pendency of his application are in excess of those required and should be refunded.

**Administrative Alternative: Suspension of Action by USPTO**

The USPTO should refund the requested fees because there are alternative procedures at the USPTO for suspending action on an application in accordance with 37 C.F.R. § 1.103 (e). Specifically, 37 C.F.R. § 1.103 (e) establishes that the USPTO may suspend action on its own initiative. When the USPTO does so, it should notify the applicant. MPEP § 709 describes the scenario where the USPTO might choose to suspend action on an application while waiting for the availability of a reference (Exhibit F, MPEP pp. 700-126 and 700-131).

In the present case, once Examiner Cosimano decided that Applicant's claims were allowed, the USPTO should have issued a Notice of Allowability in accordance with MPEP § 1302.03. When delays in processing a Notice of Allowability are expected, the Examiner "should notify applicant by way of an interview....Prompt notice to applicant is important because it may avoid an unnecessary appeal and act as a safeguard against a holding of abandonment." MPEP § 1302.03. However, the USPTO improperly did not issue a Notice of Allowability, and the Examiner did not notify applicant by way of an interview as required. Instead, the USPTO chose to suspend this action while awaiting the availability of a "second pair of eyes" review. In other words, the USPTO performed a de facto suspension of action in accordance with 37 C.F.R. § 1.103. Furthermore, the USPTO did not notify Applicant that his Notice of Allowability was being suspended pending the "second pair of eyes" review. Applicant asserts that when the USPTO initiates a suspension of action, either formally or de facto, it is improper to impose fees against the Applicant to maintain pendency of his allowed claims. For this reason, the fees paid by Applicant to maintain pendency of his application are in excess of those required and should be refunded.

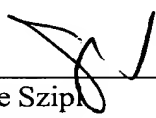
**Conclusion**

The fees requested for refund should be refunded to the Applicant because these fees were in excess of those required. Specifically, Applicant should not have to pay to maintain pendency of his allowed claims for three reasons. First, the Final Office Action was premature as a matter of fact, and not as a result of the Examiner's discretion. Second, the determination that all claims are allowable automatically removes finality in other USPTO procedures, as under Ex parte Quayle. Third, the decision by the USPTO to withhold Applicant's Notice of Allowability while awaiting a "second pair of eyes" review amounted to a de facto suspension of action initiated by the USPTO under 37 C.F.R. § 1.103. Consequently, it would be unfair for the USPTO to charge fees to the Applicant to maintain pendency of his allowed claims when the USPTO takes the initiative to suspend action on his application.

Questions are welcomed by the below-signed attorney for Applicant. The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment or refund to Deposit Account No. 501281.

Respectfully submitted,

GRIFFIN & SZIPL, PC

  
\_\_\_\_\_  
Joerg-Uwe Szimpl  
Reg. No. 31,799

GRIFFIN & SZIPL, PC  
Suite PH-1  
2300 Ninth Street, South  
Arlington, VA 22204

Telephone: (703) 979-5700  
Facsimile: (703) 979-7429  
Customer No.: 24203





IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Joshua REITER

Serial No. 09/678,850

Filed: October 4, 2000

For: INTERACTIVE PROCESS FOR  
APPLYING OR PRINTING  
INFORMATION ON LETTERS  
OR PARCELS

)  
) Atty. Docket: REITE0004  
)  
)  
) Group Art Unit: 3629  
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)  
) Examiner: COSIMANO, Edward. R.  
)  
)  
) Date: February 11, 2003  
)

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**RESPONSE (C)**

**BOX: NO FEE AMENDMENT**  
Assistant Commissioner of Patents  
Washington, D. C. 20231

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**JAN 2 8 2004**  
**GROUP 3600**

Sir:

In response to the Office Action dated December 31, 2002, with respect to the above-captioned application, please consider the following remarks.

**REMARKS**

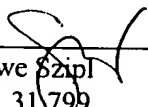
Applicant files herewith timely revised terminal disclaimers in compliance with 37 C.F.R. 1.321(c), one disclaimer each to United States Patent 5,819,241 and 6,178,411 B1. Applicant points out that the fee for the terminal disclaimer was paid previously, although the Examiner deemed the previous terminal disclaimer filed October 7, 2002, as being defective (Office Action dated December 31, 2002, page 3, lines 6-21). By timely filing the terminal disclaimers in the present application, Applicant has mooted the nonstatutory double patenting rejection of claims 1-50, based on a judicially created doctrine of obviousness-type double patenting, over either claims 1-20 of U.S. Patent 5,819,241 or claims 1-35 of U.S.

Patent 6,178,411.

For all of the reasons above, claims 1-50 are in condition for allowance and a prompt notice of allowance is earnestly solicited. Questions are welcomed by the below-signed attorney for applicant. The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 501281.

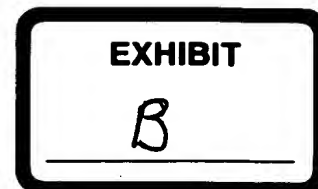
Respectfully submitted,

GRIFFIN & SZIPL, PC

  
\_\_\_\_\_  
Joerg-Uwe Szimpl  
Reg. No. 31,799

GRIFFIN & SZIPL, PC  
Suite PH-1  
2300 Ninth Street, South  
Arlington, VA 22204

Telephone: (703) 979-5700  
Facsimile: (703) 979-7429  
Customer No.: 24203



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Joshua REITER

Serial No. 09/678,850

Filed: October 4, 2000

For: INTERACTIVE PROCESS FOR  
APPLYING OR PRINTING  
INFORMATION ON LETTERS  
OR PARCELS

)  
) Atty. Docket: REITE0004  
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)  
) Group Art Unit: 3629  
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)  
) Examiner: COSIMANO, Edward. R.  
)  
)  
) Date: May 20, 2003  
)

RESPONSE (D) AFTER FINAL

BOX: NO FEE AMENDMENT  
Assistant Commissioner of Patents  
Washington, D. C. 20231

Sir:

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In response to the final Office Action dated May 6, 2003, with respect to the above-captioned application, please consider the following remarks.

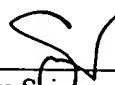
REMARKS

Applicant filed, on February 11, 2003, a timely terminal disclaimer in compliance with 37 C.F.R. 1.321(c) to United States Patent 5,819,241 as shown by the attached copy of the terminal disclaimer and the copy of the receipt card, dated February 11, 2003. However, this terminal disclaimer appears to have been separated from the file. In view of the already-filed terminal disclaimer in the present application, Applicant has mooted the nonstatutory double patenting rejection of claims 1-50, based on the judicially created doctrine of obviousness-type double patenting over claims 1-20 of U.S. Patent 5,819,241.

For all of the reasons above, claims 1-50 are in condition for allowance and a prompt notice of allowance is earnestly solicited. Questions are welcomed by the below-signed attorney for Applicant. The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 501281. .

Respectfully submitted,

GRIFFIN & SZIPL, PC

  
\_\_\_\_\_  
Joerg-Uwe Skipl  
Reg. No. 31,799

GRIFFIN & SZIPL, PC  
Suite PH-1  
2300 Ninth Street, South  
Arlington, VA 22204

Telephone: (703) 979-5700  
Facsimile: (703) 979-7429  
Customer No.: 24203

This card, when stamped with the date stamp of the U. S. Patent and Trademark Office, acknowledges receipt of the following papers relating to application Serial No. 09/678,850 of Joshua J. REITER filed October 4, 2000:

1. Response (C);
2. Terminal Disclaimer for U.S. Patent 5,819,241; and
3. Terminal Disclaimer for U.S. Patent 6,178,411 B1.

Dkt. #REITE0004

Due: 3-31-2003 (JUS/ldh)

Joshua J. REITER



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**GROUP 3600**



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Joshua REITER

Serial No. 09/678,850

Filed: October 4, 2000

For: INTERACTIVE PROCESS FOR  
APPLYING OR PRINTING  
INFORMATION ON LETTERS  
OR PARCELS

)  
) Atty. Docket: REITE0004  
)  
)  
) Group Art Unit: 3629  
)  
) Examiner: COSIMANO, Edward. R.  
)  
)  
) Date: February 11, 2003  
)

RESPONSE (C)

BOX: NO FEE AMENDMENT  
Assistant Commissioner of Patents  
Washington, D. C. 20231

Sir:

In response to the Office Action dated December 31, 2002, with respect to the above-captioned application, please consider the following remarks.

REMARKS

Applicant files herewith timely revised terminal disclaimers in compliance with 37 C.F.R. 1.321(c), one disclaimer each to United States Patent 5,819,241 and 6,178,411 B1. Applicant points out that the fee for the terminal disclaimer was paid previously, although the Examiner deemed the previous terminal disclaimer filed October 7, 2002, as being defective (Office Action dated December 31, 2002, page 3, lines 6-21). By timely filing the terminal disclaimers in the present application, Applicant has mooted the nonstatutory double patenting rejection of claims 1-50, based on a judicially created doctrine of obviousness-type double patenting, over either claims 1-20 of U.S. Patent 5,819,241 or claims 1-35 of U.S.

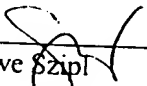
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Respectfully submitted,

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Joerg-Uwe Szipl  
Reg. No. 31,799

GRIFFIN & SZIPL, PC  
Suite PH-1  
2300 Ninth Street, South  
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**TERMINAL DISCLAIMER TO OBTAIN A DOUBLE PATENTING  
REJECTION OVER A PRIOR PATENT**

Docket Number (Optional)

REITE0004

In re Application of: Joshua REITER

Application No.: 09/678,850

Filed: October 4, 2000

For: INTERACTIVE PROCESS FOR APPLYING FOR INFORMATION ON LETTERS OR PARCELS

The owner\*, Joshua J. Reiter of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 5,819,241. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record

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JAN 28 2004

**GROUP 3600**

Signature

02-11-2003

Date

Joerg-Uwe Szipl, Registration No. 31,799

Typed or printed name

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) included

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\*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner)  
Form PTO/SB/96 may be used for making this certification. See MPEP § 324

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Box Patent Applications, Washington, DC 20231.



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**TERMINAL DISCLAIMER TO OBIATE A DOUBLE PATENTING  
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Docket Number (Optional)

REITE0004

In re Application of: Joshua REITER

Application No.: 09/678,850

Filed: October 4, 2000

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**GROUP 3600**

Signature

02/11/2003

Date

Joerg-Uwe Szipl, Registration No. 31,799

Typed or printed name

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) included.

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02/11/2003

Date

Joerg-Uwe Szipl, Registration No. 31,799

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- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) included.

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This card, when stamped with the date stamp of the U. S. Patent and Trademark Office, acknowledges receipt of the following papers relating to application Serial No. 09/678,850 of Joshua J. REITER filed October 4, 2000:

1. Response (C);
2. Terminal Disclaimer for U.S. Patent 5,819,241; and
3. Terminal Disclaimer for U.S. Patent 6,178,411 B1.

Dkt. #REITE0004

Due: 3-31-2003 (JUS/ldh)

Joshua J. REITER



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